

LYNNE C. HERMLE (STATE BAR NO. 99779)  
lchermle@orrick.com  
JOSEPH C. LIBURT (STATE BAR NO. 155507)  
jliburt@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Telephone: +1 650 614 7400  
Facsimile: +1 650 614 7401

KATE JUVINALL (STATE BAR NO. 315659)  
kjuvinall@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
355 S. Grand Ave., Suite 2700  
Los Angeles, CA 90071  
Telephone: +1 213 629 2020  
Facsimile: +1 213 612 2499

MARK THOMPSON (Admitted *pro hac vice*)  
mthompson@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
51 W 52nd St.  
New York, NY 10019  
Telephone: +1 212 506 5000  
Facsimile: +1 212 506 5151

Attorneys for Defendants KIRKLAND & ELLIS  
LLP, MICHAEL DE VRIES, MICHAEL W.  
DEVRIES, P.C., ADAM ALPER, ADAM R.  
ALPER, P.C., AKSHAY DEORAS, AKSHAY  
S. DEORAS, P.C., AND MARK FAHEY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ZOYA KOVALENKO,

Plaintiff,

v.

KIRKLAND & ELLIS LLP, MICHAEL DE  
VRIES, MICHAEL W. DEVRIES, P.C.,  
ADAM ALPER, ADAM R. ALPER, P.C.,  
AKSHAY DEORAS, AKSHAY S.  
DEORAS, P.C., AND MARK FAHEY,

Defendants.

Case No. 4:22-cv-05990-HSG-TSH

**DECLARATION OF JOSEPH C. LIBURT  
IN OPPOSITION TO PLAINTIFF'S  
MOTION TO CHANGE TIME TO MOVE  
TO STRIKE ANSWER, DKT NO. 142**

[Civil Local Rules 6-1 & 6-3]

Judge: Honorable Haywood S. Gilliam, Jr.

1 I, Joseph C. Liburt, declare as follows:

2 1. I am counsel in this action for Defendants Kirkland & Ellis LLP (“K&E”), Michael De  
3 Vries, Michael W. De Vries, P.C., Adam Alper, Adam R. Alper, P.C., Akshay Deoras, Akshay S.  
4 Deoras, P.C., and Mark Fahey (collectively “Defendants”), and I submit this declaration in support  
5 of Defendants’ Opposition to Plaintiff’s motion to change time to move to strike Defendants’  
6 answer.

7 2. I am an attorney duly licensed to practice in the State of California and am a Partner in  
8 the law firm of Orrick, Herrington & Sutcliffe LLP, attorneys for Defendants in the above-  
9 captioned case. I am familiar with the facts and circumstances of this litigation. I know the facts  
10 set forth in this declaration to be true of my own personal knowledge. If called as a witness, I could  
11 and would testify competently to the matters set forth in this declaration.

12 3. In October 2024, I had various communications with Plaintiff’s counsel, Tanvir  
13 Rahman, regarding Plaintiff’s request for a 30-day extension to file a motion to strike Defendants’  
14 answer. A true and correct copy of the communications is attached hereto as **Exhibit A**.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct. Executed in San Francisco, California on October 14, 2024.

17  
18  
19 /s/ Joseph C. Liburt

Joseph C. Liburt

# EXHIBIT A

---

**From:** Tanvir Rahman <TRahman@filippatoslaw.com>  
**Sent:** Friday, October 11, 2024 2:55 PM  
**To:** Liburt, Joseph C.; Loris Baechi  
**Cc:** Hermle, Lynne C.; Gasek, Jade; Juvinall, Kate; Thompson, Mark  
**Subject:** Re: Kovalenko/Kirkland - ADR Stipulation

**[EXTERNAL]**

Hi Joe - we have no obligation to tell you all or any of the bases we intend to move upon. It's unfortunate that it looks like we will need to be engaging in motion practice over a request for an extension - that I consent to for adversaries as a reflexive courtesy - at the same time we are preparing for mediation.




Warmly,



**FILIPPATOS PLLC**  
Employment Law, Litigation & ADR

**Tanvir Rahman**  
*Managing Partner*  
Pronouns: He/Him

---

 [\(914\) 984-1111](tel:(914)984-1111), ext. 505  
 [TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)  
 [www.filippatoslaw.com](http://www.filippatoslaw.com)



Please consider the environment before printing this e-mail.

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or if you receive this message in error, please do not print, copy, retransmit, or otherwise use the information contained herein. If you are not the intended recipient, please notify the sender by reply e-mail, facsimile or phone. Thank you.

---

**From:** Liburt, Joseph C. <jliburt@orrick.com>  
**Sent:** Friday, October 11, 2024 5:38:39 PM  
**To:** Tanvir Rahman <TRahman@filippatoslaw.com>; Loris Baechi <lbaechi@filippatoslaw.com>  
**Cc:** Hermle, Lynne C. <lcherml@orrick.com>; Gasek, Jade <jgasek@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Thompson, Mark <mthompson@orrick.com>  
**Subject:** RE: Kovalenko/Kirkland - ADR Stipulation

Hi Tanvir,

In requesting the basis of your motion, we are attempting to comply with Judge Gilliam's statement in his Sept. 16 Order that: "The parties should be prepared to discuss how to move this case forward expeditiously." If you provide the specific bases for your motion, we may be able to amend our answer to satisfy your concerns and avoid motion practice, which would spare the parties and the Court the time and expense associated with same. We do not believe an extension of time to file the motion, which would further delay these proceedings and may delay the closing of the pleadings, is appropriate here in light of Judge's Gilliam's statement and particularly since this motion could potentially be avoided altogether.

We hope that you reconsider your position, especially considering the Guidelines for Professional Conduct in the Northern District of California, which, as you know, were required to be reviewed by the parties prior to the CMC, which provide that "[b]efore filing a motion, a lawyer should engage in a good faith effort to resolve the issue."

<https://www.cand.uscourts.gov/forms/guidelines-for-professional-conduct/>

Best,  
Joe

---

**From:** Tanvir Rahman <TRahman@filippatoslaw.com>

**Sent:** Thursday, October 10, 2024 7:12 PM

**To:** Liburt, Joseph C. <jliburt@orrick.com>; Loris Baechi <lbaechi@filippatoslaw.com>

**Cc:** Hermle, Lynne C. <lhermle@orrick.com>; Gasek, Jade <jgasek@orrick.com>; Juvinal, Kate <kjuvinal@orrick.com>; Thompson, Mark <mthompson@orrick.com>

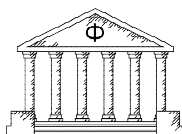
**Subject:** Re: Kovalenko/Kirkland - ADR Stipulation

**[EXTERNAL]**

Hi Joe,

We intend to move to strike under Federal Rule of Civil Procedure 12(f). And there may be other bases, but we are not in a position to tell you our specific arguments to challenge the Answer to the Amended Complaint. If Defendants wanted the case to move quickly, they could have avoided filing seven motions to dismiss (in addition to a handful of other motions attacking the complaint). If there are deficiencies with your answer, it is not our job to help you cure them. If you agree to extensions for our motion and reply, we are happy to stipulate to an extension for you to oppose the motion. Please let us know by 12 pm PST tomorrow; if we do not hear from you by then, we will move for relief from the Court given the default deadline is early next week. Thanks.

Warmly,



FILIPPATOS PLLC

Employment Law, Litigation & ADR

**Tanvir Rahman**

*Managing Partner*

Pronouns: He/Him

 [\(914\) 984-1111](tel:(914)984-1111), ext. 505

 [TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)

 [www.filippatoslaw.com](http://www.filippatoslaw.com)



Please consider the environment before printing this e-mail.

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message or if you receive this message in error, please do not print, copy, retransmit, or otherwise use the information contained herein. If you are not the intended recipient, please notify the sender by e-mail, facsimile or phone. Thank you.

---

**From:** Liburt, Joseph C. <[jliburt@orrick.com](mailto:jliburt@orrick.com)>

**Sent:** Tuesday, October 8, 2024 12:18:51 PM

**To:** Tanvir Rahman <[TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)>; Loris Baechi <[lbaechi@filippatoslaw.com](mailto:lbaechi@filippatoslaw.com)>

**Cc:** Hermle, Lynne C. <[lchermle@orrick.com](mailto:lchermle@orrick.com)>; Gasek, Jade <[jgasek@orrick.com](mailto:jgasek@orrick.com)>; Juvinal, Kate <[kjuvinall@orrick.com](mailto:kjuvinall@orrick.com)>;

Thompson, Mark <[mthompson@orrick.com](mailto:mthompson@orrick.com)>

**Subject:** RE: Kovalenko/Kirkland - ADR Stipulation

Hi Tanvir,

What is the basis of the motion to strike the Answer? I'd like to see if there is something we can work out without motions. If there is something plainly defective, we can amend.

Otherwise, while it is our practice to agree to reasonable extensions, and we have done and will continue to do so, we're concerned about Judge Gilliam's statement in his Sept. 16 Order that "The parties should be prepared to discuss how to move this case forward expeditiously." Given his views, we believe that this motion be decided as promptly as possible (if Defendants do not amend).

Best,  
Joe

---

**From:** Tanvir Rahman <[TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)>

**Sent:** Tuesday, October 8, 2024 6:48 AM

**To:** Liburt, Joseph C. <[jliburt@orrick.com](mailto:jliburt@orrick.com)>; Thompson, Mark <[mthompson@orrick.com](mailto:mthompson@orrick.com)>; Loris Baechi <[lbaechi@filippatoslaw.com](mailto:lbaechi@filippatoslaw.com)>

**Cc:** Hermle, Lynne C. <[lcherml@orrick.com](mailto:lcherml@orrick.com)>; Gasek, Jade <[jgasek@orrick.com](mailto:jgasek@orrick.com)>; Juvinal, Kate <[kjuvinal@orrick.com](mailto:kjuvinal@orrick.com)>

**Subject:** RE: Kovalenko/Kirkland - ADR Stipulation

**[EXTERNAL]**

Hi Joe – do any of the dates that Dina Jansenson has open work on your end for mediation? Can you also please also let me know whether you consent to extending Plaintiff's deadline to move to strike Defendants' Answer to Nov. 14? Thanks.

Warmly,



**FILIPPATOS PLLC**  
Employment Law, Litigation & ADR

**Tanvir Rahman**

*Managing Partner*

Pronouns: He/Him



(914) 984-1111, ext. 505



[TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)



[www.filippatoslaw.com](http://www.filippatoslaw.com)



Please consider the environment before printing this e-mail.

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message, please do not print, copy, retransmit, or otherwise use the information contained herein. If you are not the intended recipient, please notify the sender by reply e-mail, facsimile or phone. Thank you.

---

**From:** Tanvir Rahman

**Sent:** Wednesday, October 2, 2024 2:17 PM

**To:** Liburt, Joseph C. <[jliburt@orrick.com](mailto:jliburt@orrick.com)>; Thompson, Mark <[mthompson@orrick.com](mailto:mthompson@orrick.com)>; Loris Baechi <[lbaechi@filippatoslaw.com](mailto:lbaechi@filippatoslaw.com)>

**Cc:** Hermle, Lynne C. <[lcherml@orrick.com](mailto:lcherml@orrick.com)>; Gasek, Jade <[jgasek@orrick.com](mailto:jgasek@orrick.com)>; Juvinal, Kate <[kjuvinal@orrick.com](mailto:kjuvinal@orrick.com)>

**Subject:** RE: Kovalenko/Kirkland - ADR Stipulation

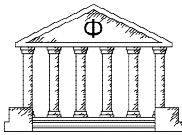
Hi Joe – do you have an update on the filing of the case management plan? We had a few non-substantive edits that are in redline in the attached so please use this version when filing.

Also, given that Defendants will be producing additional documents once the PO is entered by Judge Hixson, we wanted to reiterate our position that any document production that is not in native format with original metadata intact would violate Plaintiff's explicit request for natives and original metadata in her first set of requests for production ("RFPs") and Plaintiff's prior discussions with Defendants. We hope to not have to raise this issue with the court to the extent there is a production of documents not in native format and without original

metadata. Defendants disregarded Plaintiff's explicit instructions in the first set of RFPs that "ESI is to be produced in native (i.e., original) format(s) with all original metadata intact. Fed. R. Civ. P. 34(b)(1)(C); see also Fed. R. Civ. P. 34(a)(1)(A)." Plaintiff has made clear that Defendants must produce native documents with original metadata intact since the spring of 2023, both in writing and orally, and has provided supporting case law. E.g., *Silicon Labs Integration, Inc. v. Melman*, No. C08-04030 RMW (HRL), at \*3-4 (N.D. Cal. Nov. 3, 2010), <https://casetext.com/case/silicon-labs-integration-4> ("Defendant shall produce his emails in native format, with metadata intact, by November 10, 2010."); *Bailey v. Alpha Techs. Inc.*, No. C16-0727-JCC, at \*3 (W.D. Wash. June 1, 2017), <https://casetext.com/case/bailey-v-alpha-techs-inc-1>. Please let us know if you have any questions or would like to discuss.

In addition, Plaintiff is contemplating moving to strike Defendants' Answer to the Amended Complaint and is requesting Defendants' consent to extend the deadline to move to strike by 30 days from Oct. 15 to November 14. Please let us know whether Defendants consent to this extension request. Thanks.

Warmly,



**FILIPPATOS PLLC**

Employment Law, Litigation & ADR

**Tanvir Rahman**

*Managing Partner*

Pronouns: He/Him



[\(914\) 984-1111](tel:(914)984-1111), ext. 505



[TRahman@filippatoslaw.com](mailto:TRahman@filippatoslaw.com)



[www.filippatoslaw.com](http://www.filippatoslaw.com)



Please consider the environment before printing this e-mail.

This communication may contain Confidential or Attorney-Client Privileged Information and/or Attorney Work Product. If you are not the addressee indicated in this message, please do not print, copy, retransmit, or otherwise use the information. If you are not the intended recipient, please notify the sender by reply e-mail, facsimile or phone. Thank you.